

MEMORANDUM OF UNDERSTANDING

among the

CALIFORNIA DEPARTMENT OF WATER RESOURCES,
CALIFORNIA DEPARTMENT OF HEALTH SERVICES,
US BUREAU OF RECLAMATION, US ENVIRONMENTAL PROTECTION
AGENCY,

CONTRA COSTA WATER DISTRICT,
EAST BAY MUNICIPAL UTILITY DISTRICT,
SANTA CLARA VALLEY WATER DISTRICT,
CITY AND COUNTY OF SAN FRANCISCO PUBLIC UTILITIES COMMISSION,
ALAMEDA COUNTY WATER DISTRICT
ZONE 7 OF ALAMEDA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, AND
SAN FRANCISCO BAY AREA WATER USERS ASSOCIATION

regarding

CALFED BAY-DELTA PROGRAM STUDIES
FOR THE BAY AREA BLENDING AND EXCHANGE PROJECT

Pursuant to the CALFED Bay-Delta Programmatic Record of Decision for the Final Programmatic Environmental Impact Statement and Environmental Impact Report (hereafter, "ROD"), dated August 28, 2000, an agreement will be developed between several CALFED agencies including the California Department of Water Resources (hereafter, "DWR"), the California Department of Health Services (hereafter, "DHS"), US Bureau of Reclamation (hereafter, "Reclamation"), the US Environmental Protection Agency (hereafter, "EPA"); and potential Bay Area partners for the completion of necessary studies as part of a process to work cooperatively to address water quality and supply reliability concerns on a consensual basis consistent with the CALFED long-term comprehensive plan, including the solution principles and objectives.

Purpose. The purpose of this Memorandum of Understanding (MOU) is to memorialize the mutual willingness of the Parties to this MOU to share information as

part of a process to work cooperatively to address water quality and supply reliability concerns on a consensual basis consistent with the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000 (page 69). Potential later phases of such projects, including, preliminary design, final design, financing and construction, are not covered by this MOU.

It is hereby recognized through this MOU that:

1. Water supply agencies in the Bay Area have different water sources and different water supply and quality concerns, as well as independent, ongoing programs and projects to address their respective water supply and quality concerns;
2. the CALFED Bay-Delta Program Programmatic Record of Decision recognized that local agencies will continue to independently develop storage and other projects to meet local needs;
3. the CALFED ROD states that CALFED agencies will pursue identified complementary actions, which will help achieve CALFED goals and objectives;
4. the CALFED ROD identified as a complementary action a Bay Area water quality and water supply reliability initiative called the Bay Area Blending/Exchange Project that would enable Bay Area water agencies to work cooperatively to address water quality and supply reliability concerns on a mutually beneficial and regionally focused basis;
5. to encourage a regional approach to water supply operations, the Bay Area Blending/Exchange Project will evaluate a range of options including, but not limited to, changes to infrastructure and institutional arrangements that are mentioned in the CALFED Record of Decision;
6. the CALFED ROD committed to the identification of potential local partners and development of an agreement as needed for necessary studies with those partners for the Bay Area Blending/Exchange Project by July 2001.
7. This MOU does not cover participation in any CALFED Bay Area - wide implementation strategy.

1. Definitions

(a) "Party" and "Parties" refer to the signatories to this MOU: DWR, DHS, Reclamation, and USEPA; and local Bay Area interests represented by the East Bay Municipal Utility District (EBMUD), the Santa Clara Valley Water District (SCVWD), the Alameda County Water District (ACWD), Zone 7 of Alameda County Flood Control and Water Conservation District (Zone 7), the Contra Costa Water District (CCWD), the City and County of San Francisco Public Utilities Commission (SFPUC), and the San Francisco Bay Area Water Users Association (BAWUA).

(b) “Study” and “Studies” mean the feasibility and environmental investigations of Bay Area Blending and Exchange projects pursuant to the ROD, including the preliminary project review that will include open and objective consideration of relevant operational, environmental, cultural, engineering, financial, legal, institutional and outreach issues. Parties will use the results of these studies to determine if any of the Parties are interested in pursuing any of the Bay Area Blending and Exchange projects.

(c) “Environmental review” means the development and completion of necessary feasibility studies, analyses, and documents pursuant to National Environmental Policy Act, California Environmental Quality Act, California Endangered Species Act, Federal Endangered Species Act, Natural Community Conservation Planning Act, and other state and federal environmental laws.

(d) “CALFED Bay-Delta Program” is a cooperative interagency effort of various State and federal agencies with management or regulatory responsibilities for the Bay-Delta. Actions undertaken by the ‘CALFED Program’ pursuant to this MOU will be performed by the CALFED agencies working through the CALFED Bay-Delta Program.

2. Underlying Principles

(a) Execution of this MOU for studies in no way implies support for or an obligation to approve, or participate financially or otherwise in any Bay Area Blending and Exchange projects identified through this study phase.

(b) Participation in this MOU and studies covered by this MOU is voluntary and any agency may withdraw at any time from this MOU by providing written notice to the other Parties. Participation in this MOU and related studies does not imply endorsement or commitment to implement the recommendations of the studies.

(c) The studies will be carried out in an inclusive manner that encourages voluntary participation by the Parties executing this MOU as well as other interested persons or organizations.

(d) Execution of this MOU is in no way intended to provide preferential treatment to any particular Bay Area Blending and Exchange project in obtaining authorization or funding to proceed to construction.

(e) A separate MOU has been developed to address an expansion of Los Vaqueros Reservoir. Execution of that MOU is not intended to adversely affect work for the Bay Area regional effort or any other project that may be studied or proposed by a Bay Area agency as part of the Bay Area Blending/Exchange Project or otherwise, nor is execution of this MOU intended to adversely affect work for the Los Vaqueros Expansion Studies or any other project that may be studied or proposed by a Bay Area agency as part of the Los Vaqueros Expansion Studies or otherwise.

(f) The commitments established in the ROD for the Bay Area Blending/Exchange project and the expanded Los Vaqueros project, which have parallel commitments for preliminary studies, shall guide the schedule of work. No alteration in commitment dates is contemplated for either effort in these preliminary studies.

(g) Project elements of the studies should be designed to protect the environment consistent with overall CALFED ecosystem goals established in the ROD.

(h) Execution of this MOU or participation in the activities contemplated by this MOU in no way waives any legal or contractual rights of participating Parties.

(i) The governing boards of Bay Area water agency and water user association signatories will decide whether to proceed with implementation of recommendations from this study related to their water rights, water contracts, integrated resource plans, and infrastructure resulting from this MOU or associated studies.

(j) Execution of this MOU in no way limits the ability of water agency signatories to pursue individual projects or obtain separate federal and state funding.

(k) Unmitigated adverse impacts upon users or customers of the Bay Area water agencies, or customers of the Bay Area water agencies, or imposition of new health risks upon customers is not an acceptable outcome of the studies. No agencies or their customers are obligated by this MOU to accept adverse impacts.

(l) Characterization of water rights will be carried out with the Party holding the corresponding affected water right as the lead entity and with that Party's direct consultation and permission. Except to the extent that documentation of feasibility or infeasibility may be necessary to comply with alternatives analysis required by state and federal environmental laws, changes to existing water rights held by the EBMUD, the SFPUC, CCWD or other parties will not be considered in the Studies, and Mokelumne River water rights held by EBMUD, Tuolumne River water rights held by SFPUC, Delta water rights held by CCWD or water rights held by others will not be available to use for the Bay Area Blending/Exchange Project, without the express consent of EBMUD, SFPUC, CCWD or of other water rights holders respectively. It is the Parties' belief that consideration of such rights without the consent of EBMUD, SFPUC, CCWD and/or other parties will likely be deemed an infeasible alternative for institutional reasons.

(m) To the extent to which the studies explore or contemplate potential changes to water service contracts, or deliveries under those contracts, the Parties to the MOU who are parties to the contracts that would be changed shall reach agreement on how the contracts are characterized within the studies.

(n) Any studies of proposed interconnections between facilities owned by different agencies will be addressed in a manner satisfactory to all affected agencies.

(o) Any studies of proposed reoperation of facilities owned by different agencies will be addressed in a manner satisfactory to all affected agencies.

(p) The Studies shall be carried out in a manner to ensure that a full range of projects is evaluated, capable of providing a balanced set of water quality and water supply benefits to the participating Bay Area water districts, recognizing that the Bay Area Blending/Exchange Project is one component of the larger CALFED Program. An example of an unacceptable outcome is for one agency to have viable solutions identified for all of its needs while no solutions are identified for another. The Parties expect to discuss and develop specific measures to implement this principle during the course of the Studies.

3. Roles and Responsibilities of Parties

(a) While the Bay Area Blending and Exchange Project is identified as part of the Drinking Water Quality Program, it also has water supply reliability components and needs to be closely coordinated with other CALFED agency activities. Therefore, it will be managed by the CALFED Bay-Delta Program staff unless the Parties mutually agree that another agency should be the manager or co-manager. This MOU shall become effective upon its execution by at least one CALFED agency and by ACWD, CCWD, EBMUD, SCVWD, SFPUC, Zone 7 and BAWUA.

(b) The Parties executing this MOU will not be required to financially contribute toward costs of these studies.

(c) The manager of the Bay Area Blending and Exchange Project identified in paragraph 3(a) of this MOU is responsible for the completion and management of the studies. These studies will be consistent with Section 2.

(d) The manager of the Bay Area Blending and Exchange Project identified in paragraph 3(a) of this MOU shall insure that any tribes who may be affected by the potential Bay Area Blending and Exchange projects are involved early and fully in the studies consistent with the ROD.

(e) Each water right holder or facility owner participating in the studies will provide information on all matters pertaining to its water rights or facilities. CALFED will review this information for clarity, accuracy and consistency with the level of detail necessary for the Bay Area Blending and Exchange study and will work with parties to make sure that the best available information is used.

(f) When the studies are completed, the Parties to this MOU will reevaluate their interest in any proposed Bay Area Blending and Exchange Project based on the contents of the studies, and may at that time decline to participate further or may desire to change the contents of the MOU, or proceed to final agreements regarding participation, if a project is identified.

(g) The Parties to this MOU will establish a technical committee consisting of representatives from the Parties, including CALFED Bay-Delta Program staff in addition to staff from CALFED agencies, who will meet not less than three times per calendar year for the purposes of keeping other Parties informed, providing input, reviewing technical memoranda, and ensuring that interests and concerns are considered in the development of the studies. The manager of the Bay Area Blending and Exchange Project identified in paragraph 3(a) of this MOU is responsible for distributing meeting materials and draft work products in a timely manner to interested parties and providing timely responses to concerns raised. The technical committee will assist the manager in ensuring adequate completion and management of studies.

(h) The Parties to this MOU intend to ensure that the concepts of adaptive management and best available science will be incorporated into the studies and into any eventual project should a project be approved.

(i) The Parties to this MOU agree to provide data and other relevant information related to the completion of the studies in a timely fashion. Additionally, the Parties agree to participate in timely review and to provide comment on technical reports related to the completion of these studies. Such participation by any Party is subject to that Party's respective policy and legal direction, appropriations, authorization, and funding.

(j) Each Party shall designate at least one representative who shall be the lead contact for the organization and who, together with designated alternates, shall attend meetings of the technical committee described in Section 3(g). However, this participation is subject to appropriations and funding.

4. Outreach Responsibilities of the Parties

(a) Parties to this MOU and the CALFED Bay-Delta Program will be responsible for keeping non-participating CALFED Agencies and interested water users apprised of developments with respect to the results of the studies, subsequent agreements, and all other substantive matters related to the planning, construction and operation of potential Bay Area Blending and Exchange projects.

(b) Each Party to this MOU is responsible for keeping that Party's respective constituencies apprised of developments with respect to the terms and conditions of this MOU, the results of the studies, subsequent agreements, and all other substantive matters related to the planning of potential Bay Area Blending and Exchange projects.

(c) Parties to this MOU and the CALFED Bay-Delta Program shall provide a forum to ensure that public outreach includes local governments, tribal governments, and non-participating local and statewide interests and stakeholders, including but not limited to local environmental protection groups, environmental justice groups, recreational interests, in-Delta interests, and the business community. Future project-level studies requiring subsequent agreements to this MOU will include a public involvement component to ensure public input on project-specific aspects. All materials prepared

pursuant to the Bay Area Blending and Exchange project shall be presented at regularly scheduled Bay-Delta Public Advisory Committee meetings.

(d) Environmental justice refers to the fair treatment of people of all races, cultures, and income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Parties to this MOU will be responsible for ensuring that public outreach is conducted in a manner that promotes environmental justice and complies with relevant laws and regulations.

5. Funding and In-Kind Contributions

Funding for CALFED planning studies related to the Bay Area Blending and Exchange Project as outlined in the ROD will be provided by funds available to CALFED agencies as provided for in separate agreements. Future agreements shall also address how local monetary and "in-kind" contributions can be cost shared, subject to the availability of appropriations and funding.

6. Limitations of this MOU

Execution of this MOU does not in any way imply support for or an obligation to support, approve, or participate in any projects identified through this Phase of the Bay Area Blending and Exchange Project. No Party to this MOU is bound to any financial contribution related to these studies or participation in this or a related project, except as might be otherwise provided in separate agreements.

7. Contingent on Appropriation of Funds and Future Actions

(a) United States: The expenditure or advance of any money or the performance of any obligations of the United States under this MOU shall be contingent upon appropriation or allotment of funds in accordance with 31 U.S.C. 1341 (Anti-Deficiency Act). No liability shall accrue to the United States for failure to perform any obligation under this MOU in the event that funds are not appropriated or allotted.

(b) State of California: The commitments and obligations under this MOU of the State of California are subject to the availability of appropriated funds. No liability shall accrue to the State of California for failure to perform any obligations under this MOU in the event that funds are not appropriated.

(c) Legal consistency: All provisions of this MOU are intended and shall be interpreted to be consistent with all applicable provisions of State and Federal law.

8. Notices

All formal notices regarding the term of this MOU as detailed in Section 9 shall be sent to the following:

DWR:	Thomas M. Hannigan, Director California Department of Water Resources P.O. Box 942836, Room 1115-1 Sacramento, CA 94236-0001
DHS:	Terry Macaulay, CALFED Coordinator California Department of Health Services Office of Drinking Water Program P.O. Box 942732, MS 92 Sacramento, CA 94234-7320
USBR:	Kirk Rodgers, Acting Director Mid-Pacific Region, Bureau of Reclamation U.S. Department of the Interior 2800 Cottage Way Room East-1604, MP-100 Sacramento, CA 95825-1898
USEPA:	Karen Schwinn United States Environmental Protection Agency Region IX 75 Hawthorne Lane, WTR-1 San Francisco, CA 94105
Contra Costa Water District:	Walter J. Bishop, General Manager Contra Costa Water District PO Box H2O Concord, CA 94524
East Bay Municipal Utility District:	Dennis Diemer, General Manager East Bay Municipal Utility District 375 11th Street, MS 808 Oakland, CA 94607
Santa Clara Valley Water District:	Stan Williams, CEO Santa Clara Valley Water District 5750 Almaden Expressway San Jose, CA 95118

Alameda County Water District:	Paul Piraino, General Manager Alameda County Water District P.O. Box 5110 43885 S. Grimmer Blvd. Fremont, CA 94537
Zone 7 of Alameda County Flood Control and Water Conservation District:	Dale Myers, General Manager Zone 7 of Alameda Co. Flood Control and Water Conservation District 5997 Parkside Drive Pleasanton, CA 94588
City and County of San Francisco Public Utilities Commission:	Steven D. Leonard, Acting General Manager San Francisco Public Utilities Commission 1155 Market Street 4th Floor San Francisco CA 94102
San Francisco Bay Area Water Users Association:	Art Jensen, General Manager San Francisco Bay Area Water Users Association 155 Bovet Road, Suite 302 San Mateo, CA 94402
CALFED Bay-Delta Program:	Patrick Wright, Director CALFED Bay-Delta Program 1416 Ninth Street, Suite 1155 Sacramento, CA 95814

9. Term and Modification Provisions

(a) This MOU shall become effective upon its execution by at least one CALFED agency and by ACWD, CCWD, EBMUD, SCVWD, SFPUC, Zone 7 and BAWUA. The Parties to this MOU will reevaluate their interest in the studies upon completion of feasibility studies (currently contemplated for July 2002) and may at that time decline to participate further or propose amendments to this MOU. Unless otherwise amended or affected by a CALFED long-term governance agreement or federal or State legislation, the MOU will expire on December 31, 2003 or whenever final agreements with project participants, as contemplated in the ROD, are executed, whichever comes first. The Parties recognize that additional agreements related to alternatives identified by the Studies and among the relevant parties with interests in that alternative, might involve environmental review and might extend and retain/include some elements of this MOU.

(b) At any time, this MOU may be extended or amended by mutual, written agreement of the Parties.

(c) At any time, any Party may withdraw from this MOU by simple written notice to the other Parties.

(d) Any state, federal, or local governmental agency with jurisdiction over land, water or natural resources in California may become a party to this MOU by executing a copy of this MOU. Such execution shall be by the agency's officers pursuant to authority conferred to do so by the governing body of the agency.

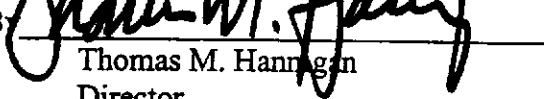
10. Counterparts

This MOU can be executed in counter parts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding.


STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Dated: 7/24/01

By 
Thomas M. Hannagan
Director

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

Dated: _____

By 
Diana M. Bontá
Director

UNITED STATES BUREAU OF
RECLAMATION, MID-PACIFIC REGION

Dated: _____

By 
FOR Kirk Rodgers
Acting Director


UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION IX

Dated: 7/27/2001

By 
for Laura Yoshii
Acting Regional Administrator

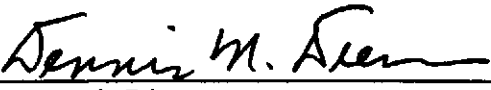
CONTRA COSTA WATER DISTRICT

Dated: _____

By 
Walter J. Bishop
General Manager

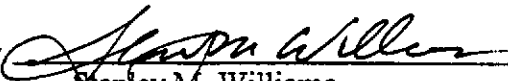
EAST BAY MUNICIPAL UTILITY DISTRICT

Dated: _____

By  *Rel*
Dennis Diemer
General Manager

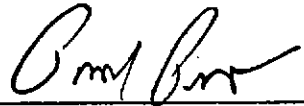
SANTA CLARA VALLEY WATER DISTRICT

Dated: SEP 18 2001

By 
Stanley M. Williams
CEO/General Manager

ALAMEDA COUNTY WATER DISTRICT

Dated: _____

By 
Paul Piraino
General Manager

ZONE 7 OF ALAMEDA COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT

Dated: 8-21-01

By 
Dale Myers
General Manager

(b) At any time, this MOU may be extended or amended by mutual, written agreement of the Parties.

(c) At any time, any Party may withdraw from this MOU by simple written notice to the other Parties.

(d) Any state, federal, or local governmental agency with jurisdiction over land, water or natural resources in California may become a party to this MOU by executing a copy of this MOU. Such execution shall be by the agency's officers pursuant to authority conferred to do so by the governing body of the agency.

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STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Dated: 7/24/01

By Thomas M. Hannigan

Thomas M. Hannigan
Director

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

Dated: _____

By Diana M. Bontá

Diana M. Bontá
Director

UNITED STATES BUREAU OF
RECLAMATION, MID-PACIFIC REGION

Dated: _____

By Kirk Rodgers

FOR
Kirk Rodgers
Acting Director